




FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: The Commissioners
Staff Director
Deputy Staff Director
General Counsel

FROM: Office of the Commission Secretary 

DATE: December 21, 2000

SUBJECT: Statement of Reasons for MURs 4929, 5006,
5090, and 5117

Attached is a copy of the Statement of Reasons for MURs 4929, 5006, 5090, and 5117 signed by Chairman Darryl R. Wold, Vice Chairman Danny L. McDonald, Commissioner David M. Mason, Commissioner Karl J. Sandstrom, and Commissioner Scott E. Thomas.

This was received in the Commission Secretary's Office on Wednesday, December 20, 2000 at 5:04 p.m.

cc: Vincent J. Convery, Jr.
Press Office
Public Information
Public Disclosure

Attachment



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In re ABC, CBS, NBC, New York Times,
Los Angeles Times and Washington Post, *et al.*

MURs 4929, 5006, 5090, 5117

STATEMENT OF REASONS

On November 14, 2000, the Commission voted 5-0¹ to activate MURs 4929, 5006, 5090 and 5117, find no reason to believe (RTB) that the respondents in the aforementioned MURs violated the Federal Election Campaign Act (FECA) and close the files. The Commission took this action because the entities named in the complaints are clearly protected by the FECA's media exemption.

Complaints

MUR 4929

In MUR 4929, Complainant alleges that ABC, CBS, NBC, the New York Times, Los Angeles Times and Washington Post are *de facto* political committees and are making illegal corporate campaign contributions by virtue of their news and commentary, which Complainant alleges is actually free advertising for the two major party presidential candidates.

MUR 5006

In MUR 5006, Complainant alleges that the television show "Hardball," hosted by Chris Matthews on CNBC, is a political committee or a committee affiliated with the Republican National Committee, George W. Bush's campaign committee and the exploratory Senate committee of Rudolph Giuliani. In addition, Hardball is accused of violating the FEC's "equal time" rulings and of the corporate contribution ban. Finally, the complaint charges that Hardball is a corporate electronic voter guide.

MUR 5090

In MUR 5090, the complainant alleges that Mr. Harley Carnes, a "regular CBS newscaster," attacked Vice President Gore, Hillary Clinton and President Clinton during "regular" or "typical" newscasts on WCBS Radio 880. Complainant expresses concern that an "outside organization" may be

¹ Commissioner Smith was absent.

responsible for Mr. Carnes' editorial statements on the Clintons and Gore or that CBS may be directing Mr. Carnes to "deliver these political attacks."

MUR 5117

In MUR 5117, the complainant alleges that the New York Times contributed corporate "public relations services" at the suggestion of the Republican National Committee by knowingly or recklessly publishing false statements in several news, editorial or opinion stories questioning Vice President Gore's honesty or veracity. The complainant alleges that the Times failed to exercise its "normal editorial function" in publishing these stories.

Analysis and Conclusions

The Commission has civil enforcement jurisdiction only over violations of the FECA, the Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act. Consequently, we have no authority over matters raised in Complainants' misplaced references to the FEC's "equal time" rulings (an apparent reference to Federal Communications Commission regulations) in MUR 4929 and to "pertinent FCC Regulations" in MUR 5090. The remaining allegations against all Respondents mentioned in these complaints are protected by the media exemption in 2 U.S.C. § 431(9)(B) and 11 CFR 100.7(b)(2) and 100.8(b)(2).

The FECA excludes from the definition of "expenditure" "any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate." 2 U.S.C. § 431(9)(B)(i); *see also* 11 CFR 100.7(b)(2) and 100.8(b)(2) (terms "contribution" and "expenditure," respectively, do not include "[a]ny cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), newspaper, magazine, or other periodical publication . . . unless the facility is owned or controlled by any political party, political committee, or candidate . . .").

When considering complaints against media entities, courts have insisted that the Commission restrict its initial inquiry to whether the media exemption applies. *Readers Digest Ass'n, Inc. v. FEC*, 509 F. Supp. 1210, 1214 (S.D. N.Y. 1981); *FEC v. Phillips Publishing, Inc.*, 517 F. Supp. 1308, 1312-13 (D. D.C. 1981). Only after concluding that the media exemption does not apply may the Commission commence an inquiry under its otherwise applicable "in connection with" (2 U.S.C. § 441b(a)) or "purpose of influencing" (2 U.S.C. § 431(8)(A),(9)(A)) standards.

This two-stage process was mandated because the media exemption represents a fundamental limitation on the jurisdiction of this agency, and even an investigation of publishers can trespass on the First Amendment. As the *Reader's Digest* court expressed it:

[F]reedom of the press is substantially eroded by investigation of the press, even if legal action is not taken following the investigation. Those concerns are particularly acute where a governmental entity is investigating the press in connection with the dissemination of political matter. These factors support the interpretation of the statutory

exemption as barring even investigation of press activities which fall within the exemption.

509 F. Supp. at 1214.

In determining whether the media exemption is applicable, the courts have held two questions to be relevant: whether the entity is owned or operated by a political party, candidate or political committee, and whether the entity is operating within its "legitimate press function." *Id.*; see also *Phillips Publishing*, 517 F. Supp. at 1313.

There is no doubt that none of the media Respondents is owned or controlled by any candidate, political party or political committee.

The complaints cite only the news stories and commentary of the Respondent entities, leading to a *per se* conclusion that the activities complained of fall within the statutory exemption of any "news story, editorial or commentary" and within the judicially-described "legitimate press function." The content of any news story, commentary or editorial is irrelevant to the determination of whether the media entity is exercising its valid press function. 509 F. Supp. At 1216.

This straightforward reading of the media exemption is consistent with our unanimous treatment of it in MUR 4863. There, the complainant alleged that a radio talk show host "*expressly or implicitly advocated* the reelection of Senator D'Amato and/or the defeat of Representative Schumer. He may have also replayed portions of D'Amato advertisements and commented on them." First General Counsel's Report at 8-9. Nonetheless, the Commission concluded that the "commentary apparently broadcast on the [radio talk show] would appear to be squarely within the 'legitimate press function' of [the radio station]." *Id.* at 9. Moreover, this conclusion was "not altered by the possibility that D'Amato advertisements may have been rebroadcast . . . within the context of [the talk show host's] commentary on them." *Id.* (citing AO 1996-48). This analysis is also consonant with MUR 3624, in which the Commission determined that a radio station exercised its press function where it was alleged to have effectively broadcast unpaid advertising for Bush/Quayle via airing of the Rush Limbaugh program, which had endorsed Bush/Quayle. See also MURs 4946 (CBS News) and 4689 (Salem Radio Network).

Thus, in these MURs, the allegations that the various news stories, commentaries or editorials may be biased in favor of various candidates – even if assumed to be true -- are simply insufficient to provide reason to believe that any violation of the FECA has occurred. Unbalanced news reporting and commentary are included in the activities protected by the media exemption.

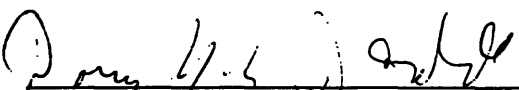
The allegation in MUR 5090 that an "outside organization" may be responsible for the editorial attacks is belied by the complaint's assertion that the statements at issue were made during regular newscasts by a member of the regular team of newscasters. Nothing in the complaint even suggests that these statements were advertisements, and the assertion that "outside parties" may have been responsible is simply too vague to constitute a cognizable claim of a FECA violation or to provide any reason to believe that the broadcasts at issue were not within the station's legitimate press function.

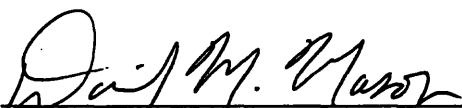
The allegation in MUR 5117 that the New York Times may have been influenced in its news, opinion or editorial coverage by suggestions from the Republican National Committee does not provide

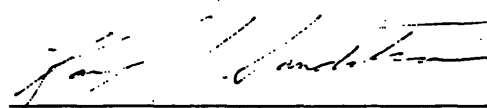
any reason to believe that the stories complained of were not within the Times' legitimate press function. Political parties and campaigns employ platoons of advisors, handlers and spokesmen charged with attempting to shape or influence media coverage of campaigns. Businesses, labor unions, interest groups and government agencies likewise attempt to influence press coverage of topics in which they are interested. It is clearly a part of the normal press function to attend to the competing claims of parties, campaigns and interest groups and to choose which to feature, investigate or address in news, editorial and opinion coverage of political campaigns. The question of whether a news organization may have credulously or recklessly accepted and reported the claims of one political party or candidate is the type of inquiry which the courts have held to be foreclosed by the FECA's media exemption.


For these reasons, there is no reason to believe the Respondents in MURs 4929, 5006, 5090 and 5117 violated the FECA.


Darryl R. Wold, Chairman


Danny L. McDonald, Vice Chairman


David M. Mason, Commissioner


Karl J. Sandstrom, Commissioner


Scott E. Thomas, Commissioner

December 20, 2000